IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) INCOME TAX APPEAL No. 11 of 2003

COMMISSIONER OF IT, UDAIPUR
V/S
MS. ROOPCHAND NAWAL CHAND GANDHI

(2) INCOME TAX APPEAL No. 13 of 2003

COMMISSIONER OF IT, UDAIPUR
V/S
MS. ROOPCHAND NAWAL CHAND GANDHI

Mr. KK BISSA, for the appellant / petitioner

Mr. MAHENDRA GARGIEYA & Mr. ANIL JOSHI for Mr. SANJEEV JOHARI, for the respondent

Date of Order : 27.11.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

These two appeals have been filed by the revenue against the judgment of the Income Tax Appellate Tribunal dated 25.6.2002 said to have been received by the revenue on 9.7.2002. Appeal No.11/2003 was admitted vide order dated 17.7.2003 by formulating the following two substantial questions of law:

> "1. Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in upholding the action of the CIT (Appeals) in deleting the addition of Rs.3,46,879/- made by the Assessing Officer on account of under valuation of closing stock.

> 2. Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in holding that investment in the purchase of stock in trade required for the business not recorded in the regular books, and as appearing in seized diary, pertains to assessment year 1988-89 and not to 1987-88."

While appeal No.13/2003 was admitted on 27.2.2003 without framing any substantial question of law.

The matters were argued with the understanding that both the appeals involve the substantial question of law No.2 framed in appeal No.11/03 only, while the appeal No.11/03 involves the other question as well.

The brief facts of the case are that the assessment was made by the Assessing Officer, for two assessment years, being assessment year 1987-88 and assessment year 1988-89. Against these assessment orders, appeals were filed, and the learned Commissioner, Income Tax, partly allowed the appeals. Then the matter was carried to Income Tax Appellate Tribunal by both the parties, inasmuch as, the assessee filed appeals being appeals No.2606/94 & 2607/94, while two appeals were filed by the revenue being appeals No.2733/94 & 2734/94. All the four appeals were decided together by the learned Tribunal by the impugned judgment.

The learned Tribunal while deciding the question No.1 framed in appeal No.11/03, relating to the deletion of addition of Rs.3,46,879/-, came to the conclusion relying upon the judgment of Hon'ble the Supreme Court in CIT Vs. British Paints India Ltd. reported in (188) 1991 ITR 44, concurred with the conclusions of CIT and maintained the deletion of the addition.

In our view, a reading of the judgment of Hon'ble the Supreme Court in British Paints India Ltd.'s case does show, that the finding recorded by the Tribunal, and the Commissioner in this regard do not require any interference, and the question No.1 framed in appeal No.11/03 is, therefore, answered against the revenue, and in favour of the assessee.

Coming to the question No.2, some facts are required to be gone into, inasmuch as, in the present case, the investments added as undisclosed investments were found to have been made during the period 3.11.1986 to 31.3.1987, and the learned Assessing Officer, considering the turn over of the financial year 1987-88, for the purpose of arriving at the investment, and gross profit, came to the conclusion that a sum of Rs.2 lac is required to be added, as unexplained investment in the assessment year 1987-88, and it was accordingly added. In appeal filed against the assessment, relating to assessment year 1987-88, it was

found, after undertaking certain calculations that the addition required to be made is only of Rs.88,000/- instead of Rs.2 lacs, for this purpose, the learned Commissioner took into account the turn over, the transactions in the diary, considered the gross profits, and thus, arrived at the above figure. Then in the appeal filed by the assessee against the assessment order for the assessment year 1988-89, the CIT found that since this investment has been taken into consideration in the year 1987-88, there is no need to make further addition of unexplained investment. Accordingly the addition of Rs.2 lacs made by the Assessing Officer in the assessment for the year 1988-89 was deleted.

Since all the appeals were decided by the ITAT, by the common order, and since the question canvassed before us, in both the appeals is only, as to whether the addition is required to be made in the assessment, for the assessment year 1987-88 or 1988-89, we examine this question.

It appears that there has been good amount of confusion before the ITAT, inasmuch as, the addition made in the assessment year 1987-88 of Rs.2 lacs, or reduced by the CIT to Rs.88,000/-, and the addition made by the identical amount in the year 1988-89 was deleted by the CIT, on account of the amount having been added in the year 1987-88, and the learned ITAT had considered the question

only while deciding appeal No.2733 and 2606, which both related to the year 1987-88, and found that the amount could be added in the year 1988-89 only, and therefore, while deciding that appeal, deleted that amount. Then what we find is, that there is no discussion by the ITAT while deciding the appeal of the revenue, relating to the year 1988-89 being appeals No.2734. Obviously in the appeal of the assessee being appeal No.2607, this question was not required to be agitated, as the amount had been deleted, with the result, that notwithstanding the finding recorded by the ITAT, as recorded about the amount being not capable of being added in the year 1987-88, and capable of being added only in the year 1988-89, the amount has gone deleted. Be that as it may.

The fact does remain that the amount is required to be added, as the question of liability to add this amount, is not under challenge on the side of the assessee. The question, therefore, appears is, only, as to whether the amount is capable of being added in the year 1987-88 or 1988-89?

For examining the question, the relevant provision of law is contained in Section 69 of the Income Tax Act, 1961, which reads as under:-

"**S.69. Unexplained investments.-**Where in the

> financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

Thus, a look at this provision leaves no manner of doubt that where in any financial year immediately preceding the assessment year, the assessee has made investments, which were not recorded in the books of accounts, if maintained by him for any source of income, and no explanation is offered, then the value of the investment is to be deemed to be income of the assessee of such financial year. Here the confusion appears to have arisen because the relevant previous year of the assessment is on the basis of Dipawali to Dipawali, which in the present case was from 3.11.1986 to the Dipawali of 1987. It may be observed here, at the cost of repeation, that the transactions relate to the period 3.11.1986 to 31.3.1987.

Since the word used in Section 69 is "deemed to be the income of the assessee of such financial year" i.e. the financial year immediately preceding the assessment year, in which the assessee has made investments, which are unrecorded; obviously, the financial year for these entries is to be taken to be from 1.4.1986 to 31.3.1987, and for

that financial year, assessment year has to be 1987-88 and not 1988-89.

That being the position, the finding recorded by the ITAT holding that the amount is not capable of being added in the financial year 1987-88 cannot be sustained, and is set aside, and the question No.2 framed in appeal No.11/03 is accordingly answered. Obviously, since the amount being found liable to be added in the assessment year 1987-88, and is being so ordered to be added, it obviously need not be added again in the assessment year 1988-89, with the result, that the order of the Tribunal as challenged in appeal No.13/03, does not require any interference.

The net result of the aforesaid discussion is that appeal No.11/2003 is allowed in part, and the order of the CIT for the assessment year 1987-88, reducing the addition from Rs.2 lacs to Rs.88,000/- in the assessment year 1987-88 is restored, and the corresponding part of the judgment of the learned Tribunal is set aside, while the appeal No.13/2003 is dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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